

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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FULTON BOILER WORKS, INC.,

Plaintiff,

-against-

AMERICAN MOTORISTS INSURANCE COMPANY,  
AMERICAN MANUFACTURERS MUTUAL INSURANCE  
COMPANY and ONEBEACON INSURANCE COMPANY,  
as Successor to Commercial Union Insurance Company,  
EMPLOYERS INSURANCE COMPANY OF WAUSAU,  
TRAVELERS CASUALTY AND SURETY COMPANY  
and NATIONWIDE MUTUAL INSURANCE COMPANY,

Civil Action No.:  
06-CV-1117 (NAM/DEP)

Defendants.

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AMERICAN MOTORISTS INSURANCE COMPANY  
and AMERICAN MANUFACTURERS MUTUAL  
INSURANCE COMPANY and  
ONEBEACON INSURANCE COMPANY, as Successor  
to Commercial Union Insurance Company,

Third-Party Plaintiffs,

-against-

EMPLOYERS INSURANCE COMPANY OF WAUSAU,  
TRAVELERS and NATIONWIDE MUTUAL  
INSURANCE COMPANY,

Third-Party Defendants.

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**CERTIFICATION OF DANIEL W. GERBER**

I, **Daniel W. Gerber**, of full age, do hereby certify and state:

1. I am an attorney admitted to practice in the United States District Court for the Northern District of New York and am a member of Goldberg Segalla LLP, attorneys for

defendant and third-party plaintiff OneBeacon Insurance Company and OneBeacon Insurance Company, as successor to Commercial Union Insurance Company (collectively "OneBeacon").

2. I submit this certification in support of OneBeacon's motion for a declaration that first-party plaintiff Fulton Boiler Works, Inc. ("Fulton") (1) must contribute toward its pro rata share toward indemnity claims for uninsured periods; and (2) that the asbestos claims attributed to insured during uninsured periods are determined by an injury-in-fact trigger.

### EXHIBITS

3. Attached hereto as **Exhibit A** is a true and complete copy of the original Complaint of Fulton dated May 10, 2006 filed with the Supreme Court of Oswego County.

4. Attached hereto as **Exhibit B** is a true and complete copy of the Notice of Removal to the Northern District of New York dated September 18, 2006.

5. Attached hereto as **Exhibit C** is a true and complete copy of Fulton's Amended Complaint of December 19, 2008.

6. Attached hereto as **Exhibit D** is a true and complete copy of OneBeacon's timely Answer to Fulton's Amended Complaint.

7. Attached hereto as **Exhibit E** is a true and complete copy of the Court's issued decision dated March 25, 2010 in regard to the Motions for Summary Judgment for Fulton's defense obligations for uninsured periods.

8. Attached hereto as **Exhibit F** is a true and complete copy of the deposition transcript of Michael Simmons dated November 23, 2009.

9. Attached hereto as **Exhibit G** is a true and accurate copy of the October 19, 2004 Insurance Archeology report performed by RM Fields International.

10. Attached hereto as **Exhibit H** is a true and accurate copy of the August 30, 1991 correspondence from Kemper to Fulton advising that they would be responsible for the time periods when it was uninsured or could not locate policies. Also included in **Exhibit H** is a true and accurate copy of the August 25, 1999 correspondence from OneBeacon (formerly known as CGU) to Fulton requesting a full schedule of insurance coverage for 1949 to the time of this letter.

11. Attached hereto as **Exhibit I** are true and accurate copies of examples of the Plaintiff Initial Fact Sheets ("PIFS") used in the underlying asbestos cases.

**Dated:** June 29, 2010  
Buffalo, New York

S/Daniel W. Gerber  
**Daniel W. Gerber, Esq.**